

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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WINE ENTHUSIAST, INC.,

Plaintiff and Counterclaim Defendant,

against

VINOTEMP INTERNATIONAL CORPORATION,

Defendant and Counterclaim Plaintiff.  
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No. 17 Civ. 6782 (DLC) (HP)

**DECLARATION OF STUART DIAMOND IN SUPPORT OF  
WINE ENTHUSIAST, INC.'S MOTION TO BIFURCATE**

**STUART DIAMOND**, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a Product Manager for Plaintiff and Counterclaim Defendant Wine Enthusiast, Inc. ("Wine Enthusiast"). I submit this declaration in support of Wine Enthusiast, Inc.'s motion to bifurcate. I make this declaration based on my personal knowledge and/or review of Wine Enthusiast files and records, and if called as a witness am competent to testify to the matters herein.

2. Wine Enthusiast sells, among other numerous products, the Evolution Series and EuroCave Revelation Series wine refrigerators, examples of which are shown below:

Evolution Series



EuroCave Revelation Series



3. The Evolution Series is sold under the WINE ENTHUSIAST brand. Wine Enthusiast is a reseller of the third party EuroCave Revelation Series products under the EUROCAVE brand.

4. As far back as around 1996, third party EuroCave sold the EuroCave 140 wine refrigerator that contained black shelf fronts, held bottles horizontally, including with the bases facing outward, and was offered with a glass door, as shown below:

**Own a EuroCave®  
for only \$995\***

IN STOCK NOW  
FOR IMMEDIATE  
DELIVERY

The Eurocave 140 lets you own these world-famous cellars with full benefits of European technology at a low introductory price. These cabinets offer you the guarantee of a constant temperature from 53°-57° and provide heat if needed. Plus, the Eurocave 140 takes up only 23 1/2 inches of space.

**Eurocave 140** #6115 (58 1/2"H x 23 1/2"W x 23 1/2"D)  
reg. ~~\$1495~~ **Sale \$995.00\***

**Glass Door** #6115GD **\$399.00**

**Sliding Display Shelves**  
#B3756  
\$79.00/ea.

**Fixed Shelves**  
#B4639  
\$59.00/ea.

Shipped  
Freight C.O.D.  
\*Limited  
Time Offer!

**NEW!  
ONLY \$995\***

Eurocave 140  
shown with  
optional  
sliding shelves



5. Since at least as early as 2011, third party U-Line has sold the Wine Captain wine refrigerators that contain black shelf fronts, hold bottles horizontally, including with the bases facing outward, and are offered with a glass door, as shown below:



6. Since at least as early as 2011, third party Marvel has sold the Chateau series wine refrigerators that contain black shelf fronts, hold bottles horizontally, including with the bases

facing outward, and are offered with a glass door (black shelf fronts optional per 2011 catalog), as shown below:



7. Beginning in at least as early as 2012, third party Avanti sold wine refrigerators that contained black shelf fronts, held bottles horizontally, including with the bases facing outward, and were offered with a glass door, as shown below:



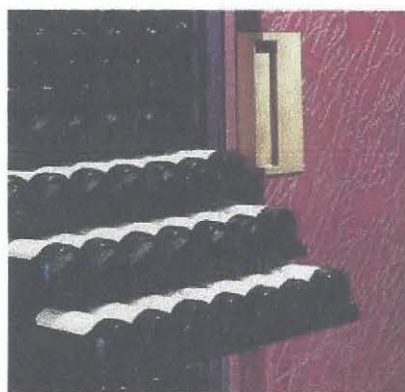
8. Since at least as early as 2013, EuroCave has sold the Revelation Series wine refrigerators that contain black shelf fronts, hold bottles horizontally, including with the bases facing outward, and are offered with a glass door, as shown below:



9. Wine Enthusiast began offering these Eurocave Revelation Series wine refrigerators in or about early-2014 and the refrigerators were featured on the cover of Wine Enthusiast's mail catalog at least as early as Spring 2014.

10. In or about 2014, Defendant and Counterclaim Plaintiff Vinotemp International Corporation made an intellectual property claim directly against EuroCave concerning these Eurocave Revelation Series wine refrigerators. Vinotemp abandoned that claim in or about 2014.

11. Prior to that, in or about 1999, EuroCave introduced the Millennium wine cellar, which contained black shelf fronts and held bottles horizontally, including with the bases facing outward, as shown below:





I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND  
CORRECT. EXECUTED ON the 3rd day of Oct, 2018 AT VALHALLA, NEW YORK.

  
Stuart Diamond